

MINUTES OF MEETING
OF THE INDUSTRIAL COMMISSION OF ARIZONA
Held at 800 W. Washington
Conference Room 308
Phoenix, Arizona 85007
Wednesday, December 2, 2009 – 1:00 p.m.

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| Present: | Marcia Weeks | Vice Chairman |
| | Louis W. Lujano, Sr. | Member |
| | John A. McCarthy, Jr. | Member |
| | David Parker | Member |
| | Laura McGrory | Director |
| | Andrew Wade | Chief Legal Counsel |
| | Darin Perkins | Director, ADOSH |
| | Gary Norem | Chief Financial Officer |
| | Teresa Hilton | Commission Secretary |

Vice Chairman Weeks convened the Commission meeting at 1:00 p.m. noting a quorum present. Mr. Delfs was not able to attend. Also in attendance were Scot Butler, the agency's lobbyist, and Teresa Yi of Snell & Wilmer.

Approval of Minutes of November 19, 2009 Meeting

The Commission unanimously approved the Minutes of November 19, 2009 on motion of Mr. Lujano, second of Mr. Parker.

Discussion &/or Action regarding Legislation

Mr. Butler gave an update of the Special Session. He stated that there may be an additional Special Session in December which would focus on revenue issues to eliminate the budget deficit. He further advised that he has heard about interest in one bill regarding workers' compensation. He has not seen a draft yet, but it would address the duty of an IME physician to a workers' compensation claimant and is in response to a recently issued Court of Appeal's opinion. Mr. Butler stated he plans to return in two weeks with a year end report.

Discussion & Action of ADOSH Discrimination Complaints

#09-42 Jim Green v. Town of Superior – Darin Perkins presented a summary of the Division's investigation of a discrimination complaint filed by Mr. Green. In his complaint, Mr. Green alleged that he was discriminated against for bringing up safety concerns on two different occasions in his place of employment. The first occurred in January of 2009 when he complained of safety concerns regarding the placement of fencing materials around or immediately near his work, making it unsafe to access his work. The second was in March when he made a complaint to ADOSH and immediately after the resulting ADOSH inspection his employer told him that mechanical work would be outsourced and he was then reassigned to weed whacker duty at the cemetery.

Mr. Perkins described the allegations and the employer's response in detail and responded to questions from the Commissioners. Mr. Perkins stated that Mr. Green did not receive a demotion in terms of his working hours or his rate of pay. Mr. Green later quit his employment with the Town. Mr. Perkins described ADOSH's assessment of Mr. Green's prior heart condition and the impact of his resignation from employment as it related to the discrimination complaint.

Mr. Lujano stated that in his review of the investigator's report, the Town's Safety Director stated that the weed whacker duty was punishment for bringing up safety issues. Mr. Parker summarized his view of the investigation and stated that he did not see that any adverse action had been taken against Mr. Green. Mr. Parker asked whether the employer was aware of Mr. Green's heart condition. Mr. Perkins responded that according to Mr. Green, the employer was aware of his condition. Mr. Lujano stated that he read the file totally differently from Mr. Parker and believed there was adverse action against Mr. Green- his work as a mechanic was terminated, and he was demoted to demeaning work as a weed whacker at the cemetery, all because he brought up unsafe working conditions.

Mr. Lujano made a motion to pursue the complaint which was seconded by Mr. McCarthy. Mrs. Weeks stated that she agreed, but could see Mr. Parker's point as well. She stated that the issue of the timing of the change of assignment led her to feel it was retaliation. Following further discussion, the Commission voted to pursue the complaint. Mr. Parker voted nay.

#09-53 Robert Chavez v. Performance Contracting, Inc. – Darin Perkins presented a summary of the Division's investigation of a discrimination complaint filed by Mr. Chavez. In his complaint, Mr. Chavez alleged that he was laid off for speaking with an ADOSH Compliance Officer during an onsite inspection. The employer stated that Mr. Chavez was laid off as part of a reduction in crew size that had been taking place over the previous few months due to lack of work. Also, the employer had a more qualified foreman to replace Mr. Chavez to oversee several painters at the Scottsdale Quarters.

Mr. Perkins described the allegations and the employer's response in detail and responded to questions from the Commissioners. Mr. Perkins stated that there did not appear to be a connection between the protected activity (complaint to management regarding respiratory use and/or participating in an ADOSH interview) and the adverse action (lay off). Mr. Chavez was laid off as part of a crew reduction based on available work for employees at the Scottsdale Quarters. Mr. Chavez remains re-hirable when a position becomes available. Following further discussion, the Commission unanimously voted not to pursue the complaint on motion of Mr. McCarthy, second of Mr. Lujano.

#09-74 Wendy Nichols v. Holiday Inn Express & Suites – Darin Perkins presented a summary of the Division's investigation of a discrimination complaint filed by Ms. Nichols. In her complaint, Ms. Nichols alleged that she was fired, in part, for bringing up health problems which she related to mold in the employee bathroom. The employer stated that Ms. Nichols was on a three-month new-hire probation period and was fired for being late for her shifts and for a general lack of respect for her job.

Mr. Perkins described the allegations and the employer's response in detail and responded to questions from the Commissioners. Mr. Perkins stated that he was not recommending pursuit of the complaint. Mr. Parker questioned whether the employer had an

recommended penalty of \$3,750.00 on motion of Mr. Lujano, second of Mr. Parker.

Corrosion Engineering, Inc.
145 S. Nina
Mesa, AZ 85201

Planned
Yrs/Business – 33
Empl. Cov. by Insp. – 74

Site Location: 145 S. Nina, Mesa, AZ 85201
Inspection #: 17163/313883589
Insp. Date: 09/16/09

SERIOUS – Citation 1, item 1 – A lathe was lacking a chuck guard (1910.212(a)(1)). There was another instance of this violation.

(No inspection history in the past three years.)

Div. Proposal - \$1,250.00

Formula Amt. - \$1,250.00

SERIOUS – Citation 1, item 2 – An iron worker was lacking a guard at the point of operation (1910.212(a)(3)(ii)). There were three other instances of this violation.

Div. Proposal - \$1,250.00

Formula Amt. - \$1,250.00

SERIOUS – Citation 1, item 3 – The employer did not ensure that the horizontal rotating shaft was guarded on a shear press (1910.219(c)(2)(i)).

Div. Proposal - \$1,250.00

Formula Amt. - \$1,250.00

SERIOUS – Citation 1, item 4 – A shear press was lacking a guard on the vertical drive belt and pulley (1910.219(d)(1)).

Div. Proposal - \$1,250.00

Formula Amt. - \$1,250.00

SERIOUS – Citation 1, item 5 – One employee was working with a 7" hand grinder which was lacking a guard (1910.243(c)(1)).

Div. Proposal - \$1,000.00

Formula Amt. - \$1,000.00

SERIOUS – Citation 1, item 6 – The employer failed to install ground fault circuit interrupter receptacles where employees were wet cutting ceramic on five wet saws (1910.304(b)(2)(iv)(B)).

Div. Proposal - \$1,250.00

Formula Amt. - \$1,250.00

TOTAL DIV. PROP. - \$7,250.00

TOTAL FORMULA AMT - \$7,250.00

Darin Perkins summarized the citations and proposed penalty as listed and responded to questions from the Commissioners. Mr. Parker wondered if, since items 3 and 4 dealt with the same piece of equipment, they should be grouped. Mr. Perkins explained that the violations addressed two separate standards, but they could be grouped for purposes of assessing a penalty if the Commission so chose. Following further discussion and inspection of photographs of these violations, Mr. Lujano made a motion to approved staff's recommendation for a penalty of \$7,250.00 and stated that he was hesitant to group the citations since they were both serious violations. Following further discussion regarding the commonality of the location of the guarding violations, Mr. Lujano modified his motion to group items 3 and 4 with a penalty of \$1,250 for a total penalty of \$6,000.00 which was seconded by Mr. Parker and unanimously approved.

Desert Metal Works, Inc.
2465 N. Huachuca Drive
Tucson, AZ 85745

Planned
Yrs/Business – 19
Empl. Cov. by Insp. – 30

Site Location: 2465 N. Huachuca Drive, Tucson, AZ 85745
Insp. #: N5645/313891277
Insp. Date: 09/30/09

SERIOUS – Citation 1, item 1 – The guard on a cold-saw was wired in the up position, not guarding the operation (1910.212(a)(3)(II)).
(No inspection history in the past three years).

Div. Proposal - \$1,000.00

Formula Amt. - \$1,000.00

SERIOUS – Citation 1, item 2 – Energized wires were protruding from an electrical junction box mounted to the floor (1910.303(b)(1)).

Div. Proposal - \$1,250.00

Formula Amt. - \$1,250.00

TOTAL DIV. PROP. - \$2,250.00

TOTAL FORMULA AMT - \$2,250.00

Darin Perkins summarized the citation and proposed penalty as listed and responded to questions from the Commissioners. Following discussion and inspection of photographs of these violations, the Commission unanimously approved issuing the citations and assessed the recommended penalty of \$2,250.00 on motion of Mr. Parker, second of Mr. Lujano.

Velmar Food Services, Inc. dba Arizona Gold
3812 W. Clarendon Avenue
Phoenix, AZ 85019

Planned
Yrs/Business – 30
Empl. Cov. by Insp. – 9

Site Location: 3812 W. Clarendon Avenue, Phoenix, AZ 85019
Insp. #: I7163/313946899
Insp. Date: 10/15/09

SERIOUS – Citation 1, item 1 – A conveyor belt did not have the in-going nip points guarded between the rollers and conveyor belt (1910.212(a)(1)). There was another instance of this violation.

(No inspection history in the past three years).

Div. Proposal - \$750.00

Formula Amt. - \$750.00

SERIOUS – Citation 1, item 2 – A smoke tender unit did not have the drive belt and pulleys completely enclosed to prevent accidental contact with rotating parts, pinch points and in-going nip points (1910.219(d)(1)).

Div. Proposal - \$750.00

Formula Amt. - \$750.00

SERIOUS – Citation 1, item 3 – One work table with a conveyor belt system was lacking a guard to prevent accidental contact with rotating sprockets and chains (1910.219(f)(3)).

Div. Proposal - \$ 750.00

Formula Amt. - \$ 750.00

TOTAL DIV. PROP. - \$2,250.00

TOTAL FORMULA AMT - \$2,250.00

Darin Perkins summarized the citations and proposed penalty as listed and responded to questions from the Commissioners. Following discussion and inspection of photographs of these violations, the Commission unanimously approved issuing the citations and assessed the recommended penalty of \$2,250.00 on motion of Mr. McCarthy, second of Mr. Lujano.

Westerner Products, Inc.
201 E. Grant Road
Tucson, AZ 85705

Planned
Yrs/Business – 40
Empl. Cov. by Insp. – 15

Site Location: 201 E. Grant Road, Tucson, AZ 85705
Insp. #: N5645/313947004
Insp. Date: 10/21/09

GROUPED SERIOUS – The alleged violations below have been grouped because they involve similar or related hazards that may increase the potential for injury resulting from accident

Citation 1, item 1a – A circular handfed ripsaw was not equipped with a blade guard (1910.213(c)(1).

Citation 1, item 1b - A handfed circular ripsaw was not equipped with a spreader (1910.213(c)(2).

Citation 1, item 1c - A handfed ripsaw did not have non kickback fingers or dogs (1910.213(c)(3).

(No inspection history in the past three years).

Div. Proposal - \$750.00

Formula Amt. - \$750.00

SERIOUS – Citation 1, item 2 – Sprockets and chains on the small roll form machine were not guarded (1910.219(f)(3).

Div. Proposal - \$750.00

Formula Amt. - \$750.00

SERIOUS – Citation 1, item 3 – The power cord to the refrigerator had a damaged strain relief at the plug (1910.305(g)(2)(iii). There were two other instances of this violation.

Div. Proposal - \$ 750.00

Formula Amt. - \$ 750.00

TOTAL DIV. PROP. - \$2,250.00

TOTAL FORMULA AMT - \$2,250.00

Darin Perkins summarized the citations and proposed penalty as listed and responded to questions from the Commissioners. Following discussion and inspection of photographs of these violations, the Commission unanimously approved issuing the citations and assessed the recommended penalty of \$2,250.00 on motion of Mr. McCarthy, second of Mr. Parker.

Mr. McCarthy commented that the compliance officers had done a good job on the case files and conducted thorough investigations.

Discussion & Action of Proposed Civil Penalties Against Uninsured Employers

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| 2C09/10-0251 | ARC One Associates, LLC |
| 2C09/10-0562 | A Shining Star Preschool, Inc. aka Discovery Learning Center |
| 2C08/09-1947 | Keith G. Waldersen & Rhonda J. Waldersen, Husband & Wife dba CF Capital Finance, Inc. |
| 2C07/08-1552 | El Rancho Snowflake, Inc. aka El Rancho Café #4 |
| 2C08/09-2071 | Noor Corporation dba Frank's Pizza & Wings |

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|--------------|---|
| 2C08/09-1939 | J & L Harvesting, Inc. |
| 2C09/10-0264 | Donald J. Greathouse, a Single Man dba Mardon Nametag Company |
| 2C09/10-0204 | Bubba' Investments, LLC dba Sammy's Sports Bar & Grill |
| 2C09/10-0804 | Richard James Voth Jr. & Samantha Simmons Voth, Husband & Wife dba Samurai Sam's Teriyaki Grill/Surf City Squeeze |

Mr. Wade advised that a compliance investigation confirmed that the above listed employers were operating (or had operated) a business with employees, but without workers' compensation insurance. Giving consideration to the factors of A.R.S. §23-907(K), Mr. Wade recommended that civil penalties of \$1,000.00 be assessed against employers #0251, 1947, 1552, 2071, 1939, 0264 and 0204. Mr. Wade stated that employer #0562 has obtained coverage and stated that he recommended a reduced penalty but it was up to the Commission to determine whether to assess a reduced penalty of \$500.00. Mr. Wade responded to questions from the Commissioners regarding employer #0562. Mr. McCarthy made a motion to assess a penalty of \$500.00 against employer #0562.

With regard to employer #0804, Mr. Wade explained that staff's recommendation was for a penalty in the amount of \$5,000.00 since this was the employer's second civil penalty. Mr. Wade explained that the employer has finally obtained insurance coverage. He described the history of the Commission's attempts to persuade this employer to obtain insurance and stated that it is up to the Commission to determine whether to assess a \$5,000 penalty or a reduced penalty of \$2,500.00 or to assess no penalty. Mr. Parker stated that, given the company's history, he did not believe they deserved a reduction in the originally proposed penalty. Ms. McGrory explained that it was within the Commission's discretion to assess the \$5,000.00 penalty or a reduced penalty. Following further discussion, Mr. Lujano made a motion to assess a civil penalty of \$2,500.00 against employer #0804.

Following further discussion, the motions were withdrawn and the Commission unanimously approved civil penalties of \$1,000.00 be assessed against employers #0251, 1947, 1552, 2071, 1939, 0264 and 0204; a civil penalty of \$500.00 against employer #0562; and a civil penalty of \$5,000.00 against employer #0804 on motion of Mr. Lujano, second of Mr. McCarthy.

Discussion &/or Action regarding Budget and Operations of the Industrial Commission

Ms. McGrory stated that there was nothing new to report.

Discussion &/or Action regarding Industrial Commission of Arizona, for Itself and as Trustee for the Special Fund of the Industrial Commission of Arizona; and the Special Fund of the Industrial Commission of Arizona, Petitioners, v. Dean Martin, Arizona State Treasurer, in his official capacity; Janice K. Brewer, Governor of the State of Arizona, in her official capacity, Respondents. The Commission may move into Executive Session under A.R.S. §§38-431.03(A)(3) and (A)(4) for Discussion and Consultation with the Attorneys of the Public Body regarding Pending Litigation or Settlement Discussions in order to resolve Litigation. Legal action involving a final vote or decision shall not be taken in Executive Session. If such action is required, then it will be taken in General Session

Mr. Wade stated that there was nothing new to report.

Announcements

Ms. Hilton reminded the Commissioners that the next meeting was scheduled for

Thursday, December 10th.

There being no further business to come before the Commission and no public comment, Vice Chairman Weeks adjourned the meeting at 2:25 p.m.

APPROVED:

THE INDUSTRIAL COMMISSION OF ARIZONA

By _____

Chairman

By *Kevin Weeks*
Vice Chairman

By *Louis W. Lyons, Sr.*

Member

ATTEST:

By *John Mc Coy Jr*

Member

Teresa Hulton
Commission Secretary

By _____

Member